

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JULIO PEREZ,

Petitioner,

- against -

ERIC H. HOLDER, JR., Attorney  
General; JANET NAPOLITANO,  
Secretary of the Department of  
Homeland Security; CHRISTOPHER  
SHANAHAN, U.S. ICE Field Office  
Director for the New York Field  
Office; and CORNELL ORSINO, Warden  
of Immigration Detention Facility,

Respondents.

TO THE HONORABLE P. KEVIN CASTEL, U.S.D.J.:

11 Civ. 5029 (PKC) (JCF)

REPORT AND  
RECOMMENDATION

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>1/31/12</u>
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Julio Perez brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging his detention pending removal from the United States pursuant to the Immigration and Nationality Act (the "INA"). Because the petition is now moot, I recommend that it be dismissed.

Background

Mr. Perez is a native and citizen of the Dominican Republic who was admitted to the United States on March 13, 1988, as a lawful permanent resident. (Notice to Appear dated Dec. 3, 2009 ("Notice to Appear"), attached as Exh. 1 to Return dated Oct. 27, 2011 ("Return")). In 2007 he was convicted in New York State Supreme Court of attempted criminal sale of a controlled substance

in the third degree, for which he received a sentence of five years probation. (Repository Inquiry, attached as Exh. 2 to Return, at 6). In 2009, while still on probation, Mr. Perez was convicted of attempted criminal possession of a narcotic drug in the fourth degree and sentenced to eighteen months of imprisonment. (Repository Inquiry at 5).

While Mr. Perez was in state custody, U.S. Immigration and Customs Enforcement ("ICE") initiated removal proceedings on the grounds that he was subject to being removed pursuant to 8 U.S.C. § 1227(a)(2)(A)(iii) as an alien convicted of an aggravated felony and pursuant to 8 U.S.C. § 1227(a)(2)(B)(i) as an alien convicted of a narcotics offense. (Notice to Appear at 1). When he was released from state custody on January 15, 2010, Mr. Perez was immediately taken into custody by ICE pending his deportation. (Detention History, attached as Exh. 6 to Return). On November 22, 2010, he was ordered removed. (Decision of Immigration Judge dated Nov. 22, 2010, attached as Exh. 3 to Return, at 18). Mr. Perez initiated a series of challenges to his removal, which culminated in a determination by the Second Circuit on November 22, 2011, dismissing his petition for review of the removal order. (Perez v. Holder, No. 11-1509-ag, attached to Letter of Patricia L. Buchanan dated Nov. 30, 2011). In the meantime, Mr. Perez had filed the instant petition, seeking to be released from detention. Following

the Second Circuit's determination, the petitioner was removed to the Dominican Republic on January 17, 2012. (Letter of Patricia L. Buchanan dated Jan. 30, 2012 at 1).

#### Discussion

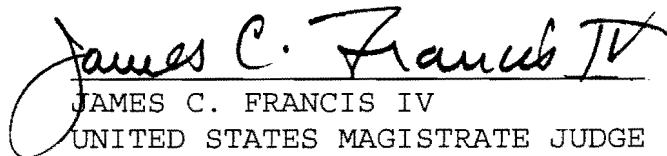
Pursuant to Article III, Section 2 of the United States Constitution, a habeas petition is moot if there is no case or controversy. A habeas petition challenging immigration detention is moot once the petitioner has been deported and is no longer in ICE custody. See Paraison v. Holder, No. 09 Civ. 10283, 2010 WL 1712019, at \*1 (S.D.N.Y. March 23, 2010); Wong Silk Leung v. Department of Homeland Security, No. 09 Civ. 2528, 2009 WL 2956829, at \*1 (S.D.N.Y. Sept. 15, 2009); Denis v. DHS/ICE of Buffalo, New York, 634 F. Supp. 2d 338, 340-41 (W.D.N.Y. 2009). Here, Mr. Perez sought only release from ICE detention; he has exhausted all challenges to the order of removal and has alleged no collateral consequences from the now-concluded detention. Accordingly, Mr. Perez's habeas petition is moot because it presents no case or controversy.

#### Conclusion

For the reasons explained above, I recommend that the petition be dismissed. Pursuant to 28 U.S.C. § 636(b)(1) and Rules 72, 6(a), and 6(d) of the Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from this date to file written

objections to this Report and Recommendation. Such objections shall be filed with the Clerk of the Court, with extra copies delivered to the chambers of the Honorable P. Kevin Castel, Room 2260, and to the chambers of the undersigned, Room 1960, 500 Pearl Street, New York, New York 10007. Failure to file timely objections will preclude appellate review.

Respectfully submitted,

  
JAMES C. FRANCIS IV  
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York  
January 31, 2012

Copies mailed this date:

Julio Perez<sup>1</sup>  
041-598-307  
Orange County Jail  
110 Wells Farm Road  
Goshen, New York 10924

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86 Chambers Street  
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<sup>1</sup> Because Mr. Perez's current address is unknown, a copy of this Report and Recommendation is being sent to his last known address prior to his removal.